

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2010 – 02388

YVETTE ALLEYNE

CLAIMANT

AND

LINOR BALLAH

DEFENDANT

BEFORE THE HONOURABLE MR JUSTICE R. BOODOOSINGH

Appearances:

Mrs Kathleen Pilgrim-Thornhill for the Claimant

Mr Jerome Herrera instructed by Mr Brian Camejo for the Defendant

DATED: 29 January 2013

EDITED TRANSCRIPT OF ORAL DECISION

1. The claimant and defendant are daughter and mother respectively. The claim concerns a house located at Edinburgh, Chaguanas. The land on which the house was built was transferred by the claimant's sister and her sister's husband to her mother, the defendant.

A house was then built on the land. The claimant says she was responsible for building the house and paying for its construction. The defendant says the house was built from her funds.

2. The claimant says the property is held in trust for her by the defendant. The defendant says no such arrangement exists. The claimant says the arrangement was agreed to by the claimant, her sister, her brother in law and the defendant in a series of conversations in 2000 to 2001.
3. The genesis of this dispute was the lot of land at Edinburgh which the National Housing Authority had leased to the claimant's sister and her husband (the Samburys). NHA required that a house be built on the land within a specified time. The Samburys had migrated to the United States. They did not intend to return to Trinidad. The property was transferred to the defendant at the time because the claimant was undergoing divorce proceedings with her husband. The desire was that the property would not get tied up in the divorce proceedings and be seen as matrimonial property.
4. The Samburys gave the claimant consent to conduct business on their behalf. The claimant went to NHA and communicated to them the need to build a house or risk losing the land.

5. The claimant then says she built the house using her resources.
6. The defendant at this time was working in the United States as a caregiver. She also had another property of her own for her to live in at Mt Hope.
7. The defendant says the property was a gift to her for her to obtain an income in her golden years and there was no trust arrangement.
8. The issues for the court are whether the transfer of the Edinburgh property to the defendant was done for her to hold it in trust for the claimant; whether the claimant is the sole owner of the dwelling house; and whether the defendant has any share in the dwelling house.
9. The claimant and her sister Earlyn Sambury gave evidence for the claimant. The defendant alone gave evidence.
10. The first issue was whether a trust was created. For this to have been done, the intention must have been clearly expressed and agreed on by the parties. The trustee must be fully aware that she is holding the property as a trustee and is aware of her duty to transfer it when called on to do so. The law as set out by the defendant in their submissions of 24

August 2012 is accepted by the claimant. There must be a common intention. It must be unconscionable for a party to deny the beneficiary the rights in question: see Lord Browne Wilkinson in **Westdeutsche Landesbank v Islington LBC [1996] AC 669** at page 705.

11. I now come to the evidence. On the issue of whether there was an agreement, the evidence of the claimant and her sister was preferred. The defendant's evidence was a simple denial. The claimant and her sister gave more detailed evidence of the arrangement and the rationale for it. Further, the claimant was engaged in the house construction intensely. Many receipts for materials and labour were presented in her name or in the name of the contractor. She drove the construction. Between the claimant and the defendant, the claimant would have had more financial resources to put into the construction of the property because of her job. The defendant was retired many years before as a maid and went to work as caregiver in the United States. She gave no evidence in support to show that she actually earned \$700. per week in the US.

12. The claimant was actively involved in the house construction in a way as if it were her own.

13. I also found no reason to disbelieve the claimant's sister. If she and her husband had given the land as a gift to her mother, why would they deny it? The arrangement that she

described in her witness statement seems far more plausible than what the defendant has asserted.

14. I also found the defendant to be belligerent in cross examination. She didn't seem to want to answer the questions posed at times by the claimant's counsel. She also didn't seem to be fully seized of the facts.

15. In cross examination, the defendant said she was part of the mortgage of the Edinburgh property when the mortgage documents say otherwise. She said she did not know how much money would go into the joint account to pay the mortgage. She also said she did not know how much of the weekly earnings of \$700. US she would wire to the account. She did not know how much was the mortgage payments due. She said she did not know if the claimant supervised the building of the foundation. She accepted she was in the United States at the time. Her evidence on the whole was not believable. It is absolutely clear that the claimant was the driving force in constructing and managing the Edinburgh property. All of the bills support this.

16. It is also reasonable to conclude that the defendant would not have been able to obtain a bank mortgage because of her age and income at the time. She has herself provided no supporting evidence of her earnings. In any event, to the extent that she put money into

the joint account, it is both conceivable and reasonable that that money would have been applied to the Mt Hope mortgage which is the defendant's property.

17. I should note that there is also no counterclaim in the alternative that the defendant is entitled to an equitable interest in the Edinburgh property.

18. On the evidence, I also find the claimant was the sole owner and that the defendant had no equitable share in the house, it being held in trust by the defendant for the claimant.

19. I found the claimant and her sister's evidence to be generally consistent. Further, the weight of the evidence lay with the claimant's assertions.

20. The claimant also managed an account with the defendant. She says there had been a previous arrangement regarding the defendant's Mt Hope house so she saw no reason why the defendant would not honour this arrangement.

21. This was ultimately a most unfortunate and belligerent position adopted by the defendant in refusing to honour the arrangement made between the parties. I formed the impression that the claimant and her sister found no joy in having to challenge their mother in court

like this. On the whole of the evidence on a balance of probabilities, the claimant's case is more credible, supported, reasonable and consistent. The claim has been proved.

22. There is judgment for the claimant against the defendant in terms of her statement of case.

23. Given the defendant's age, her relationship to the claimant and all the circumstances of this claim I will make no order for costs against her.

Ronnie Boodoosingh

Judge